HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1036 (MS) of 2006.

Smt. Nutan Srivastava,

W/o Manish Kumar Srivastava,

Vs.

State of Uttaranchal, through Secretary

Education Department, Govt. of U.A. at Dehradun and others

Approved for reporting.

_____

Not approved for reporting

Date of decision 04.08.2006.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1036 (MS) OF 2006

Smt. Nutan Srivastava,
W/o Manish Kumar Srivastava,
R/o Jaspur Khurd (Patel Nagar),
Kashipur, District-Udham Singh Nagar. ....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Education Department, Government of Uttaranchal at Dehradun.
2. Director of Education, Uttaranchal at Dehradun.
2. Principal District Institute of Education & Training Udham Singh Nagar, District-Udham Singh Nagar.

.....Respondents.

Mr. Lalit Singh Bisht & Kishore Kumar, Advocate for the petitioner.
Standing Counsel for the respondents.

Dated: 04.08.2006

Hon'ble Rajesh Tandon, J.

Heard counsel for both the parties.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to consider the candidature of the petitioner for training of Assistant Teacher in Primary School ignoring the condition imposed by the respondents.

Briefly stated, petitioner has passed Shiksha Visharad from Hindi Sahitya Sammellan Allahabad (Hindi University) in the year 1995. According to the petitioner, Shiksha Visharad is equivalent to B.Ed Syllabus of the University. The requirement in the advertisement is quoted below:-

''अनिवार्य योग्यताएं–

1. शैक्षिक– विधि मान्यता प्राप्त विश्वविद्यालय से स्नातक।

2. प्रशिक्षणः— इस हेतु उत्तरांचल/उत्तरप्रदेश की मान्यता प्राप्त संस्था द्वारा संस्थागत परीक्षार्थीयों के रूप में बी0एड0/एल0टी0 अथवा पत्राचार के माध्यम से बी0 एड0 हेतु मान्यता प्राप्त विश्वविद्यालय से बी0एड0 उत्तीर्ण किया गया हेा। जिन्होनें संस्कृत विश्वविद्यालय से शिक्षा शास्त्री की उपाधि ली हो एवं शिक्षा शास्त्री की परीक्षा संस्थागत परीक्षार्थी के रूप में उत्तीर्ण की हो वे भी अर्ह होंगे। उत्तरप्रदेश सरकार द्वारा मान्यता प्राप्त ऐसी संस्थाओं जो राष्ट्रीय अध्यापक प्रशिक्षण परिषद द्वारा मान्यता प्राप्त हों, से शारीरिक शिक्षा प्रशिक्षण यथा बी0पी0एड0, डी0पी0एड0, सी0पी0एड0 अभ्यर्थी भी अर्ह समझे जाएंगे। इसके संबंध में उत्तर प्रदेश शासन द्वारा मान्य की गई अवधि (वर्ष 1997) तक के मान्य की गई संस्थाओं से उत्तीर्ण संस्थागत अभ्यर्थियों केा ही अर्ह समझा जएगा।

3. आयु सीमाः— अभ्यर्थी की आयु 1 जुलाई, 2004 केा 18 से कम व 40 से अधिक न हो। आरक्षित वर्ग के अभ्यर्थियेां को अधिकतम आयु सीमा में छूट प्रदान की जएगी जो इस संबंध में प्रचलित शासनादेशेां के अनुसार अनुमन्य होगी।

4. आवेदन शुल्कः— रेखांकित पेास्टल आर्डर/बैंक ड्राफ्ट के रूप के रूप में 100/— (सैा रूपये मात्र) एस0सी0/एस0टी0 के लिए रू0 40/— (चालीस रूपये मात्र) शुल्क लिया जायेगा, जो प्राचार्य जिला शिक्षा एवं प्रशिक्षण संस्थान डीडीहाट, पिथौरागढ़ के पद नाम से देय होगा।

5. अंतिम तिथिः— इच्छुक अभ्यर्थी निर्धारित प्रारूप पर फोटोयुक्त आवेदन पत्र पर, पता लिखा हुआ लिफाफा रजिस्ट्री टिकट युक्त (25 X 10 सेमी) समस्त शैक्षिक व प्रशिक्षण प्रमाणपत्र अंक पत्रों तथा अन्य प्रमाणपत्रों केा स्वप्रमाणित प्रतियों सहित रजिस्टर्ड डाक से आचार्य, जिला शिक्षा एवं प्रशिक्षण संस्थान डीडीहाट पिथौरागढ़ के पते पर विज्ञप्ति प्रकाशन के 15 दिन के भीतर अवश्य पहुॅच जाएं। इसके बाद के आवेदन पत्रों पर कोई विचार नहीं किया जायेगा।''

According to the case of the petitioner under the U.P. Subordinate Education (Trained Graduates Grade) Service Rules, 1983 the courses, which are conducted by the Hindi Sahitya Sammellan are recognized i.e. Sahitya Ratna (2 years course) from the Hindi Sahitya Sammellan, Prayag and is equivalent degree to Bachelors degree in Hindi. Shiksha Visharad equivalent to B.Ed. having not been considered, they

approached to this Court under Article 226/227 of the Constitution of India. In a similar writ petition on 26.03.2004 following interim order was passed:-

"Heard Sri H.M. Raturi, learned counsel for the petitioner.

Sri J.P. Joshi learned Standing Counsel has accepted notice on behalf of the respondents. The respondents may file counter affidavit within four weeks. Put up thereafter.

In the meantime, if the petitioner is permanent resident of Uttaranchal, the respondents shall consider the case of the petitioner provisionally for admission in special B.T.C. training course, in terms of the order dated 04.02.2004 passed by this court in W.P.No. 56/2004 passed by this court in W.P.No. 56/2004 Rashmi Thakur Vs. State of Uttaranchal and others. Put up with W.P.No. 56/2004.

In the aforesaid writ petition, a counter affidavit has been filed by the Standing Counsel, where it has been stated that Shiksha Visharad has not been recognized by the National Council for Teacher Education and as such the same cannot be termed as an equivalent qualification mentioned in the advertisement and the petitioner is not entitled to be selected in Special B.T.C.

Standing Counsel has referred procedure of the N.C.T.E. Act. The preamble of the Act is quoted below:-

"An Act to provide for the establishment of a National Council for Teacher education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matter connected therewith.

BE it enacted by Parliament in the Forty-Fourth year of the Republic of India as follows:-"

Section 16 of the National Council for Teacher Education reads as under:-

> *"16. Affiliating body to grant affiliation after recognition or permission by the Council:- Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day.-*
>
> *(a) grant affiliation, whether provisional or otherwise, to any institution; or*
>
> *(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution.*

unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15."

Section 14 of the National Council for Teacher Education Act, 1993 provides as under:-

> *"14. Recognition of institution offering course or training in teacher education.-(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations;*
>
> *Provided that an institution a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.*

(2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall, --

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) if it is of the opinion that such institution does not fulfil the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing;

Provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section 93) shall be published in the Official Gazette and recommunicated in writing for appropriate action so such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation of the institution, where recognition has been refused."

Proviso to Section 14 provides that they shall be entitled to continue such course or training for a period of six month if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

Section 17 (4) provides the contravention and consequences. Sub Clause (4) is quoted as under:-

"(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school,

college or to her educational body aided by the Central Government or any State Government."

The said Act was made applicable from 1st July, 1995.

The grievance of the petitioner is that he has already qualified the course in the years before 1995 and as such the said Act which was made applicable from 1st July, 1995 is not applicable with the facts of the present case.

The petitioner has referred ***Nirmal Rani (Smt.) Vs. State of U.P. and others U.P.L.B.E.C. 2000 (1) Page 86,*** where the Shiksha Visharad has been held to be equivalent to B.Ed. Relevant paragraph 3 is quoted below:-

"3. Petitioner has passed High School and Intermediate Examinations of 'U.P. Board, Allahabad'. She also passed 'Madhyama' (Intermediate level), Sahitya Ratna (B.A. Level) as well as Shiksha Visharad Examinations (said to be equivalent to B.Ed.), Teaching Training Course from Hindi Shitya Sammelan, Allahabad. Petitioner has filed certain documents (as Annexure-I, II and III to the Writ Petition) to show that 'Shiksha Visharad' of Hindi Sahitya Sammelan is recognized as equivalent to B.Ed./Trained Teacher."

The petitioner has also referred Act of Hindi Sahitya Sammelan. The provision of Hindi Sahitya Sammellan is quoted below:-

''6 (च) शिक्षा विशारद (बी0एड0)

परीक्षार्थी को स्नातक, मध्यमा अथवा समकक्ष उपाधि धारक के साथ 2 वर्ष का अध्यापन कार्य का अनुभव होना चाहिए। इस परीक्षा में निम्न 5 प्रश्न पत्र होते हैं।

''1 – शिक्षा मनोविज्ञान तथा शैक्षिक मूल्यांकन 2 – शिक्षा सिद्वान्त तथा शिक्षण विधियां, 3 – भारतीय शिक्षा का इतिहास 4–स्वास्थ्य शिक्षा तथा पाठशाला का प्रबन्ध 5– देवनागिरी लिपि,

हिन्दी भाषा और साहित्य का इतिहास। इस परीक्षा का पाठ्यक्रम बी0एड0 के पाठ्यक्रम के सामान्य होता है। परीक्षार्थी को लिखित परीक्षा के साथ–साथ प्रयोगात्मक परीक्षा भी देनी होगी तथा उसे 20 वादन चयनित विषयों का शिक्षण हेतु पाठ्ययोजना तैयार करनी होगी जिसे परीक्षा पूर्व संस्थान कार्यालय में जमा करना अनिवार्य होगा।''

Standing counsel has referred the judgment of ***Shailendra Kumar Singh Vs. State of U.P. and others E.S.C. (All.J.) [2004 (1)].*** In the aforesaid case law, the question with regard to the applicability of the N.C.T.E. Act has not been considered, but only general proposition was considered. Relevant observations are quoted below:-

"29. Before parting with the case, in order to safeguard the career of the students and to prevent them form being misled by uncrecognized degrees, the Court feels it proper to issue directions to the State Government and the National Council for Teacher Education to ensure that the Hindi Sahitya Sammelan, Allahabad which is a body constituted under the provisions of the 1962 Act, does not hold any examinations of a course of teacher training and/or grant affiliation to any institution which has not been recognized by the National Council for Teacher Education.

30. The Court further finds that the provisions of the NCTE Act are not sufficient to deal with unscrupulous person who run institutions/colleges offering unrecognized course of training in teacher education by playing with the career of innocent youths and running their life. Except under Section 17 of the NCTE Act, which deals with the contravention of the provisions o the NCTE Act and consequences thereof by only

providing that the unrecognized course or training in teacher education shall not be treated as a valid qualification for the purposes of employment under the Central/State Government, there is no provision in the NCTE Act which may provide any deterrent for such an unscrupulous person. In fact, they go scot free leaving the innocent persons high and dry. Time has come for the Government of India to provide for more stringent provisions in the NCTE Act for dealing with such unscrupulous person."

The Apex Court in ***Suresh Pal and others Vs. State of Haryana and others AIR 1987 SC Page 2027*** has observed that where it has been held that any enactment cannot be said to apply retrospectively. Relevant observations are quoted below:-

"We are of the view that since tat the time when the petitioners joined the course it was recognized by the Govt. of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was recognized, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was derecognized by the State Govt. on 9th January, 1985. We would, therefore, allow the appeal and direct the State Govt. to recognize the certificates obtained by the petitioners and others similarly situate as a result of completing the certificate course in Shri Hanuman Yayayam Prasarak Mandal Amravati for the prupose of appointment as Physical Training Instructor in Govt.

Schools in Haryana. Of course, if any person has jointed the certificate course after 9th January, 1985 he would not be entitled to the benefit of this order and any certificate obtained by him form the said Institute would be of no avail."

In ***State of Mararashtra Vs. Sant Dnyaneshwar Shikshan Sanstra Mahavidyalaya & Ors. 2006 AIR SCW 2048,*** the three Judge Bench of the Apex Court has held as under:-

"72. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System 'throughout the country'. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. It is neither open to the State Government nor to a University to consider the local conditions or apply 'State Policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

In ***Mohd. Sartaj and another Vs. State of U.P. (S.C.) [2006 (108) FLR 847],*** the Apex Court has held as under:-

"The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallim-e-Urdu, Jamia Urdu Aligarh with that of B.T.C. in the year, 1994 would not entail the benefit to the appellants on the date they were appointed. The appellants could not have been appointed to the post of Assistant Teachers without having training required under Rule 8. That being the case, the appointments of the appellants were de hors the Rules and could not be treated to be continued. For the aforesaid reasons, we do not find any substance in the appeals and are, accordingly, dismissed. However, in the circumstances of the case, there shall be no order as to costs."

In ***R.N. College, Meerut Vs. Chancellor, B.R. Ambedkar University, Lucknow and others 2006 (2) ALJ 721 (D.B.),*** it has been held as under:-

"There is no provision under the Act by means of which an inference could be drawn that once the recognition is granted, the affiliation has to follow automatically. In the instant case, the Recognition was granted subject to affiliating university ensuring the appointment of thue teachers as per norms of NCTE.UGC/Affiliating University amongst other things. Thus, according to recognition order itself the matter for affiliation of the college with the university was to be examined by Chancellor/Vice Chancellor before grant of affiliation. The affiliation of a college is for the purpose of holding examination of the candidates while the recognition of an institution is for other purpose. When matter of affiliation has to be

considered by University, it cannot be expected to act ion mechanical manner without application of mind. 'Recognition' and 'affiliation' are two different and independent things.

Thus, the plea cannot be accepted that affiliation by university after recognition by NCTE is to follow as a natural consequence."

Relying upon the judgment ***Krishnasamy reddiar Education Trust v. Member Secretary National Council for Teacher Education and another, (2005) 4 SCC 89*** in ***National Council for Teacher Education & another Vs. Committee of Management & others, 2006 AIR SCW 1333,*** the apex Court has held as under:-

"18. We may notice that a Division Bench of this Court in Krishsamy Reddiar Educational Trust v. Member Secretary, National Council for Teacher Education and another, reported in (2005) 4 SCC 89, opined that:

"It was submitted that in the present matters, all the appellants were applying for the first time and as such they were required to follow the Regulations in force, operative and applicable to fresh applications. In such cases, Notes (1) and (2) of Appendix 1-B (list of essential documents) will apply. Notes (1) and (2) read thus :

"(1) If the application is found incomplete i.e. with all the essential documents, the institution may be asked to make good deficiencies in the application on or before the last date prescribed in the Regulations.

(2) In the even when deficiencies in an application get removed only after the last date, the application of the institution shall be carried forward by the Regional Committee for consideration for the subsequent academic year i.e. for the course that would be offered one year later."

In our view, the respondents are right in submitting that there was delay on the part of the appellants. In all the three cases, applications were submitted without NOC from the State Government. It has come on record that NOC was applied for belatedly. The State Government could not be blamed for not taking a decision on the applications of the appellants as under Regulation 6 as amended in 2003, it was required to dispose of such applications within six months of the last date of receipt of applications. Even prior to the amended Regulation 6, it was expected to take decision within 'reasonable time' (four months) as held in St. Johns Teachers Training Institute. As the appellants applied for NOC in the last week of October, 2003, they cannot make complaint that the State Government delayed the matter. Admittedly, NOCs were submitted to the respondent after the last date of application,. If in the above facts and circumstances, recognition has been granted by the respondent on 28-10 2004 by imposing a condition that it would be operative from academic year 2005-2006, it cannot be said that the respondent had acted illegally, arbitrarily or otherwise unreasonably."

21. Before parting wit this case, we may place on record that it is categorically stated before us by Mr. Raju Ramachandran that the Council carried forward the application of the Institution for consideration of the subsequent academic year. An inspection has already been carried out and the eligibility of the first respondent to obtain such recognition shall be determined within a period of eight weeks from date. We place on record the aforementioned submissions of the learned senior counsel appearing on behalf of the appellant."

The petitioner has obtained the degree of Shiksha Visharad before the N.C.T.E. Act was enforced i.e. before 1st July, 1995.

Sri Sudhir Singh, Advocate for the National Council for Teacher Education has orally submitted that NCTE has been established under an Act of Parliament on August, 17th 1995 and has become empowered to recognize teacher education institutions from the session 1996-1997 and therefore, the candidates, who have been awarded degree diploma certificate etc. prior to this date by University / State Govt. may be got verified from the concerned University/State Govt. or association of India University.

In view of the above, National Council for Teacher Education Act being not in existence at the relevant time, approval/recognition of the Institution from N.C.T.E. was not required.

Petitioner has obtained the degree of Shiksha Visharad in the year, 1995, he is entitled to be considered for special B.T.C. subject to the restrictions imposed by the National Council for Teacher Education Act, 1993 and further

recognition and verification is obtained from the concerned University/State Govt. or the institution concerned regarding their concerned degree.

Subject to the verifications as stated above, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

04.08.2006
Rathour